

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEBRASKA

IN THE MATTER OF:

Richard Kent Halliburton,)	Case No. BK 10-82389
)	Chapter 7
)	
Debtor.)	

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

COMES NOW CNH CAPITAL AMERICA, LLC, a Delaware limited liability company, successor in interest to Case Credit Corporation and assignee of New Holland Credit Company, LLC (hereinafter "Creditor"), by its undersigned counsel, and files the within Motion, and in support of the same respectfully submits as follows:

BACKGROUND

1. The Debtor filed his Petition under Chapter 7 of the Bankruptcy Code on August 18, 2010, Case No. 10-82389.

2. On or about October 24, 2007 the Debtor personally guaranteed (hereinafter, "Guaranty") a Retail Installment Sale Contract and Security Agreement (hereinafter "Agreement") dated October 24, 2007, executed by Debtor as President of Advanced Maintenance Technologies, Inc., which purchased One (1) 2007 New Holland Telehandler model LM435A, S/N 41810606 (hereinafter Equipment"). Copies of the Guaranty, the Agreement and UCC perfecting Creditor's purchase money security interest are incorporated herein. Paper copies of the Agreement, which has the Guaranty on page two(2) of the Agreement and UCC will be sent to all interested parties along with the Creditor's Motion for Relief and will be annexed to Creditor's affidavit evidence in the event the matter becomes contested.

3. The Debtor is in default of the guaranty for, among other reasons, having failed to timely pay all amounts due. The Debtor's counsel has indicated that the Debtor has no control or interest in the equipment, which remains with the corporation Advanced Maintenance Technologies, Inc.

RELIEF FROM THE AUTOMATIC STAY UNDER §362(d)(1)

4. Under §362(d)(1), relief from stay is appropriate for "cause."

5. Cause exists under the circumstances of this case for the following reasons, among others:

- a) The Debtor is in default under the terms of his personal guarantee for among other reasons, having failed to timely make all payments to Creditor when due.
- b) The Debtor, so Movant is informed and believes, has no interest in the equipment, which is not even in Debtor's possession. Debtor does not intend to treat this creditor in these proceedings.
- c) Creditor should be granted relief from the stay so it may pursue its legal remedies against its collateral in the possession of Advanced Maintenance Technologies, Inc., who is not a party to these proceedings.
- d) The estate has no interest in the equipment and it is not listed as an asset of the estate. There is no value to the estate as the amount owed to this Creditor exceeds the value of the equipment.

WHEREFORE, Creditor respectfully requests an Order granting it Relief from the Automatic Stay under §362(d)(1) so that it can exercise its rights and remedies under the Agreement and applicable non-bankruptcy law with respect to the Equipment. Movant further requests that Federal Rule of Bankruptcy Procedure 4001 (a)(3) be waived.

Dated this 6th day of October, 2010.

CNH CAPITAL AMERICA LLC, a
Delaware limited liability company, f/k/a
Case Credit, a Division of Case
Corporation, Creditor

By S/Donald G. Furlow
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CERTIFICATE OF SERVICE

A copy of the foregoing **Creditor's Motion for Relief** was delivered by the Court electronically to those that are live participants in the CM/ECF Program and by First Class United States Mail, to all persons who are not live participants adequate postage prepaid. Movant further states that paper copies of all documents evidencing perfection of Movant's security interest were delivered to the Trustee and Debtors' counsel promptly after filing its Motion for Relief From Stay and further delivered by regular U.S. mail, postage prepaid, on the 6th day of October, 2010, to:

Parties Served by Electronic Means:

Debtor's Counsel Erin M. McCartney

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Parties Served by Non-Electronic Means:

Debtor

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S/ Donald G. Furlow
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